

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

IGANCIO COBOS,

Plaintiff,

vs.

RICK LONG,

Defendant.

NO. CV-09-5008-CI

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DENYING  
APPLICATION TO PROCEED *IN FORMA*  
*PAUPERIS*

BEFORE THE COURT is Magistrate Judge Imbrogno's Report and Recommendation to deny Mr. Cobos's application to proceed *in forma pauperis* (Ct. Rec. 10). The deadline for filing objections and/or to pay the \$350.00 filing fee was administratively extended to May 5, 2009, due to Plaintiff's transfers between Franklin County Jail and Washington Correction Center.<sup>1</sup> Although Plaintiff claimed not to have

<sup>1</sup>In "Exhibits" attached to his "Objections," Plaintiff indicates he was transferred to the Department of Corrections on March 18, 2009; returned to the Franklin County Jail on March 26, 2009; and transferred back to the Department of Corrections in Shelton, Washington, on April 1, 2009. During this period, mail sent to Plaintiff was returned as undeliverable and efforts were made to re-send it to Plaintiff at the Washington Correction Center on March 25, 2009, April 6, 2009, and April 15, 2009 (Ct. Recs. 12, 14, and 18).

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING APPLICATION TO PROCEED *IN FORMA PAUPERIS* -- 1

1 received a copy of the Report and Recommendation, he nevertheless  
2 submitted "Objections" to it on April 15, 2009 (Ct. Rec. 17). He did  
3 not submit further Objections by the extended deadline. Although, on  
4 May 11, 2009, the court received Plaintiff's "Supplemental Objection"  
5 (Ct. Rec. 19).

6 In his Objections, Mr. Cobos asserts, as a poor person, he has a  
7 right to access the court for review of his allegations without  
8 prepayment of fees. Contrary to Plaintiff's assertion, however, the  
9 Prison Litigation Reform Act makes *in forma pauperis* status  
10 unavailable to prisoners who have "on 3 or more prior occasions, while  
11 incarcerated or detained in any facility, brought an action or appeal  
12 in a court of the United States that was dismissed on the grounds that  
13 it is frivolous, malicious, or fails to state a claim upon which  
14 relief may be granted." 28 U.S.C. § 1915(g); *see also Andrews v. King*,  
15 398 F.3d 1113, 1116 n. 1 (9th Cir. 2005).

16 As stated in the Report and Recommendation, court records  
17 indicate three of Plaintiff's prior cases have been dismissed as  
18 frivolous, malicious, or for failure to state a claim upon which  
19 relief may be granted. See CV-01-5019-CI (Ct. Recs. 5 & 6), *Cobos v.*  
20 *Franklin County Jail, et al*; CV-04-5077-FVS (Ct. Rec. 24), *Cobos v.*  
21 *Franklin County Jail*; and CV-06-5008-CI (Ct. Recs. 34 & 35), *Cobos v.*  
22 *Benton County Jail, et al*. Mr. Cobos presented no facts in his  
23 complaint or his objections from which the court could infer he was in  
24 imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).  
25 Therefore, he may not proceed without prepayment of the filing fee in  
26 this action.

1       **IT IS ORDERED** the Report and Recommendation (Ct. Rec. 10) is  
2 **ADOPTED in its entirety** and Plaintiff's application to proceed *in*  
3 *forma pauperis* is **DENIED**. Because Plaintiff is proceeding *pro se* this  
4 court will grant him an additional **twenty (20) days** to pay the \$350.00  
5 filing fee if he wishes to proceed with this action. Failure to do so  
6 will be construed as his consent to dismissal of the complaint.

7       **IT IS SO ORDERED.** The District Court Executive is directed to  
8 enter this Order, forward a copy to Plaintiff, and SET CASE MANAGEMENT  
9 DEADLINES ACCORDINGLY.

10       **DATED** this 15th day of May, 2009.

11  
12                                   **s/Lonny R. Suko**

13                                   \_\_\_\_\_  
                                  LONNY R. SUKO  
                                  UNITED STATES DISTRICT JUDGE